

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

RI KY ROOFING & SHEET METAL, LLC,
an Oregon limited liability company,

Plaintiff,

vs.

DTL BUILDERS, INC., a Utah corporation,
and THE CINCINNATI INSURANCE
COMPANY, an Ohio surety

Defendants.

Case No. 6:17-cv-01592-MK
OPINION AND ORDER

DTL BUILDERS, INC., a Utah corporation,

Plaintiff,

vs.

RI KY ROOFING & SHEET METAL, LLC,
an Oregon limited liability company,

Defendant.

Case No. 6:17-cv-01251-MK
OPINION AND ORDER

AIKEN, Judge:

United States Magistrate Judge Mustafa T. Kasubhai filed this Findings and Recommendations ("F&R") on April 29, 2019. (Doc. 82 in 6:17-cv-01592-MK, Doc. 95

in 6:17-cv-01251-MK). The F&R recommended that this Court deny DTL's Motion for Summary Judgment and deny DTL's Motion in Limine with prejudice. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

On May 6, 2019, DTL filed a "Request for Clarification or, in the Alternative, Objection to Magistrate Judge's Findings and Recommendation" (doc. 84 in 6:17-cv-01592-MK, doc. 97 in 6:17-cv-01251-MK). The request pointed out that its Motion in Limine was directed at both the Court's disposition of its summary judgment motion and the evidence for trial. DTL stated that it did not take issue with Judge Kasubhai's recommendation that its Motion in Limine be denied as moot with respect to summary judgment, but asserted that Judge Kasubhai's recommendation of denial with prejudice goes beyond his findings and would preclude DTL from renewing the motion at trial. DTL asked Judge Kasubhai to confirm that his recommendation on the Motion in Limine was focused on the Motion for Summary Judgment and to recommend that its Motion in Limine be denied without prejudice. Finally, DTL stated that it would object to the F&R "[t]o the extent Magistrate Judge Kasubhai retains his recommendation that DTL's Motion in Limine be denied with prejudice[.]" Request at 5.

In response, Judge Kasubhai issued an Order clarifying the F&R as follows: "The Court denies DTL's Motion in Limine . . . as moot for the purposes of summary judgment only. DTL's Motion in Limine is denied without prejudice." (Doc. 85 in 6:17-cv-01592-MK, Doc. 98 in 6:17-cv-01251-MK). Because Judge Kasubhai

reconsidered his F&R as DTL requested, there are no objections to the F&R, as clarified in Judge Kasubhai's order.

Although this relieves me of my obligation to perform a *de novo* review, I retain the obligation to "make an informed, final determination." *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), *overruled on other grounds*, *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (en banc). The Magistrates Act does not specify a standard of review in cases where no objections are filed. *Ray v. Astrue*, 2012 WL 1598239, *1 (D. Or. May 7, 2012). Following the recommendation of the Rules Advisory Committee, I review the F&R for "clear error on the face of the record[.]" Fed. R. Civ. P. 72 advisory committee's note (1983) (citing *Campbell v. United States District Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (stating that, "[i]n the absence of a clear legislative mandate, the Advisory Committee Notes provide a reliable source of insight into the meaning of" a federal rule). Having reviewed the file of this case, I find no clear error.

//

//

//

//

//

//

//

Accordingly, the Court ADOPTS Magistrate Judge Kasubhai's F&R (doc. 82 in 6:17-cv-01592-MK, doc. 95 in 6:17-cv-01251-MK) as clarified in his Order (doc. 85 in 6:17-cv-01592-MK, doc. 98 in 6:17-cv-01251-MK). DTL's Motion for Summary Judgment (doc. 66 in 6:17-cv-01592-MK, doc. 68 in 6:17-cv-01251-MK) is DENIED. DTL's Motion in Limine (doc. 69 in 6:17-cv-01592-MK, doc. 71 in 6:17-cv-01251-MK) is DENIED as moot for purposes of summary judgment only.

IT IS SO ORDERED.

Dated this 3RD day of July 2019.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge